Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	

COMMENTS OF
CENTENNIAL COMMUNICATIONS CORP.

Pursuant to the *Notice of Proposed Rulemaking* released in the above-captioned docket on February 25, 2003, Centennial Communications Corp. ("Centennial") hereby submits its comments. In general, Centennial agrees with the initial Joint Board recommendation and Commission decision in the *First Report and Order*[1] that excludes equal access from the list of services supported by universal service funding. Moreover, although Centennial appreciates the positions and rationales of those Joint Board participants who favor inclusion of equal access among the services supported by universal service mechanisms, Centennial respectfully disagrees with certain of their analyses and conclusions. Finally, Centennial would add that the growing ambiguity between "local" and "toll" services, and the scope of Major Trading Areas ("MTAs") throughout which wireless carriers typically provide flat-rated or bulk monthly service plans, tend to diminish the regulatory justifications for including equal access as a component of universal service.

[1] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997).

A. Congressional Intent Disfavors Extending Universal Service Support to Equal Access

Section 705 of the Telecommunications Act of 1996 adopted a new paragraph (8) to Section 332 of the Communications Act.[2] The legislative history of Section 705 makes clear that Congress acted to "supercede the equal access, balloting and prescription requirements imposed by the MFJ and the AT&T-McCaw consent decree."[3] But it is important to recognize that Congress also specifically considered and rejected a legislative proposal that would have mandated equal access for CMRS providers.

Section 705 was the result of a conference agreement on competing provisions from S. 652 and H.R. 1555, which took diametrically opposed positions with respect to mobile service providers' access to long distance carriers. The Senate bill proposed that a commercial mobile service provider would not be subject to any consent agreement resulting from any consent decree.[4] The House bill obligated the Commission to adopt regulations "to afford subscribers of two-way switched voice commercial mobile radio service access to a provider of telephone toll service of the subscribers choice".[5] Thus, even though the conference agreement adopted the House version of Section 705, it is fair to state that Congress expressly considered and rejected the obligation for CMRS providers to meet equal access requirements. The Conference Report therefore concludes that "[t]he conference agreement adopts the House provision ***with modifications*** . . . Specifically, no CMS provider is required to provide equal access to common

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2 Pub L 104-104, § 705, 110 Stat. 153 (1996).

3 H.R. REP. NO. 458, 104th Cong., 2d Sess., *published at* 142 Cong. Rec. H1135 (Daily ed. Jan. 31, 1996).

4 S. 652, 104th Cong., 1st Sess., § 109 (1995).

5 H.R. 1555, 104th Cong., 1st Sess., § 108 (1995).

carriers providing telephone toll service."[6] It is no wonder, then, that just days after passage of the Telecommunication Act, the Commission concluded: "In light of the recent amendments to the Communications Act, we no longer have the authority to require CMRS providers to offer equal access."[7]

Given this legislative history, it is difficult to conceive that Congress would, on the one hand, disapprove a federal mandate for CMRS equal access but, on the other hand, approve of a federal regulatory scheme that allows for recovery of CMRS equal access costs through a federally mandated assessment. Centennial respectfully suggests that implementation of Congressional intent in this circumstance requires the continued exclusion of equal access for CMRS providers from universal service.

B. Supporters of Including Equal Access in Universal Service Incorrectly "Shift the Burden" of Persuasion

Those commenting in favor of including equal access as a defined service that receives universal service support state that their "recommendation is premised on our findings that equal access satisfies the criteria set forth in section 254(c) and that section 332(c)(8) presents no obstacle to the inclusion of equal access in the list of core services supported by universal service funding."[8] Centennial respectfully suggests that this view shifts the burden of persuasion necessary to conclude that equal access for CMRS providers should be included as an element of universal service.

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6 H.R. REP. NO. 458, 104th Cong., 2d Sess., *published at* 142 Cong. Rec. H1135 (Daily ed. Jan. 31, 1996) (emphasis added).

7 *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Service*, 2 CR 922 at ¶ 3 (1996).

8 *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 02J-1 *Recommended Decision* at ¶ 75 (2002).

Because Section 332(c)(8) does not expressly state that CMRS providers can provide equal access as a universal service, advocates of that position must engage in statutory construction to infer Congressional intent supporting their position. Yet, a basic canon of statutory construction is that "[n]o intent may be imputed to the legislature in the enactment of a statute other than such as is supported by the face of the statute itself."[9] Given the express language of Section 332, it is hard, if not impossible, to infer Congressional intent for including equal access in universal service. "If the words of a statute are otherwise ambiguous, it is difficult to conceive of situations in which congressional silence would lend great clarity."[10] Nor are the proponents helped by the lack of discussion in the legislative history of Section 322. "Drawing inferences as to congressional intent from silence in legislative history is always a precarious business."[11] Moreover, if "clear evidence of affirmative congressional intent is lacking, we cannot infer that Congress has legislated silently."[12]

Although it is tempting to conclude that it is *possible* to include CMRS equal access in universal service because Congress did not expressly forbid it, Centennial submits that Congressional silence in the statute, coupled with the legislative history of Section 332, should be interpreted as creating a negative presumption, not a positive presumption as proponents conclude. Such a negative presumption is most consistent with canons of statutory construction and courts' interpretation of analogous circumstances.

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9 *Madison Loan & Thrift Co. v. Neff*, 648 S.W.2d 655, 657 (Tenn. Ct. App. 1982).

10 *Avco Corp. v. United States Dep't of Justice*, 884 F.2d 621, 625 (1989).

11 *Symons v. Chrysler Corp. Loan Guarantee Bd.*, 670 F.2d 238, 242 (D.C. Cir. 1981).

12 *Amalgamated Transit Union v. Metropolitan Atlanta Rapid Transit Authority*, 667 F.2d 1327, 1334 (11th Cir. 1982).

C. The Erosion of Traditional Toll Service Argues Against Inclusion of Equal Access in Universal Service

As the wireless industry has matured, it has brought significant competition to both local exchange carriers and long distance providers. An important element of this competition is the opportunity made available by CMRS companies to their customers for calling areas that greatly exceed traditional local calling areas ("LCAs"). Licenses for certain CMRS providers are issued on a Major Trading Area ("MTA") basis,[13] which often exceed wireline LCAs and cross LATA boundaries. The Commission's own rules and decisions recognize that CMRS providers enjoy a larger LCA than wireline LECs. Section 51.703(b) of the Commission's rules, for example, precludes a LEC from charging a CMRS provider for facilities used to deliver LEC-originated traffic that originates and terminates within the same MTA, as this constitutes local traffic.[14]

Competition in the wireless industry is robust. Users are fast replacing wireline services with wireless. At least one published report predicts that the number of wireless subscribers in the United States will reach 200 million by the end of 2006.[15] Among the major CMRS providers, most partner with long distance providers to sell a broader range of services than ever before. In short, the wireless market is booming, and customers are evidently pleased with their provider and service choices. When then, would government see the need to impose what soon may be an anachronistic concept of wireline universal service to wireless providers? Centennial respectfully suggests that proponents of including equal access for CMRS in universal service have overlooked the success of the wireless market, which has flourished largely in the absence of government regulation. The Commission should not take a step backwards in this proceeding,

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[13] 47 C.F.R. § 24.202(a).

[14] *Mountain Communications, Inc. v. Qwest Communications International, Inc.*, 17 FCC Rcd 15135 at ¶ 6 (2002) (citations omitted).

especially when the statistics indicate that CMRS providers may have reinvented the notion of "universal service" in response to customer demand.

CONCLUSION

WHEREFORE, based on the foregoing reasons, Centennial respectfully urges the Commission to continue to exclude CMRS equal access from universal service.

Respectfully submitted,

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[15] http://www.newsfactor.com/perl/story/19409.html